UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF IOWA

CHAPTER 7

Case No.

Shelly Kay Smith Debtor

94-61277KW

U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF IOWA

Mercantile Bank of Illinois, N.A.

"" 0 4 j

Plaintiff

BARBARA A EVERLY, CLERK

v.

In re:

Shelly Kay Smith Defendant

Adversary Proceeding No. 94-6163kw

JUDGMENT

This proceeding having come on for trial or hearing before the court, the Honorable Paul J. Kilburg, United States Bankruptcy Judge, presiding, and the issues having been duly tried or heard and a decision having been rendered,

IT IS ORDERED AND ADJUDGED: That the Defendant's debt in the amount of \$1,967.18 is excepted from discharge pursuant to 11 U.S.C. Sec. 523(a)(2)(A).

IT IS FURTHER ORDERED that judgment is entered in favor of the plaintiff and against the defendant in the amount of \$1,967.18 plus interest at the rate of 15.9% per annum plus the costs of this action.

S ANKAGATER TENTON

[Seal of the U.S. Bankruptcy Court] Date of Issuance: May 4, 1995

BARBARA A. EVERLY Clerk of Bankruptcy Court

By: Miliam a Golay Deputy Clerk

> Recorded Vol V Page 18

FILED U.S. BANKRUPTCY COURT NORTHERN DISTRICT OF IOWA MAY 0 4 1995

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)	CASE NO. 94-61277KW ADVERSARY NO. 94-61	BARBARA A EVERLY, CLERK
SHELLY KAY SMITH,))	ADVERSART NO. 74-01	OJK W
Debtor.) 		
MERCANTILE BANK OF ILLINOIS, N.A.,)		
Plaintiff,)))	JUDGMENT ENTRY	
vs.)		
SHELLY KAY SMITH,)		

NOW on this _____ day of May, 1995, this matter comes before the court on the Plaintiff's Motion for Summary Judgment. The Plaintiff appears by counsel, G. Mark Rice of Adams and Howe, P.C. and the Defendant appears by Counsel Don Gottschalk.

Defendant.

The court finds that on November 11, 1994, the Plaintiff filed a Complaint to Determine the Dischargeability of the Defendant's Debt of \$1,967.18 pursuant to 11 U.S.C. §523(a)(2)(A). Thereafter, the Defendant filed an Answer generally denying the allegations of the Plaintiff's Complaint.

On March 20, 1995, the Plaintiff filed a Motion for Summary Judgment alleging that there was no genuine issue of material fact and that the Plaintiff was entitled to a judgment as a matter of law due to the failure of the Defendant to respond to the Plaintiff's Request for Admissions.

The Court further finds that there was no resistance filed to the Plaintiff's Motion for



Summary Judgment and that the Plaintiff is entitled to a judgment as a matter of law.

ACCORDINGLY, IT IS THEREFORE ORDERED that the Defendant's debt in the amount of \$1,967.18 is excepted from discharge pursuant to 11 U.S.C. §523(a)(2)(A).

IT IS FURTHER ORDERED that a Judgment be entered in favor of the Plaintiff against the Defendant in the amount of \$1,967.18 plus interest at the rate of 15.9% per annum plus the costs of this action.

Paul J. Kilburg Bankruptcy Judge

Northern District of Iowa

Prepared and submitted by:

G. Mark Rice, 504-64-2288 Adams & Howe, P.C. 620 Hubbell Building Des Moines, IA 50309 (515) 246-1400 ATTORNEY FOR MERCANTILE BANK OF ILLINOIS, N.A.

Clerk mail copies to:

G. Mark Rice 620 Hubbell Building Des Moines, IA 50309

Don Gottschalk 704 Main Street P.O. Box 523 Cedar Falls, IA 50613 Notice sent to: $\omega()$ fulgrand

G. Mark Rice

G. Mark Rice 620 Hubbell Building Des Moines, IA 50309

Don E. Gottschalk 704 Main Street PO Box 523 Cedar Falls, IA 50613

US Trustee - CR Law Building Suite 400 225 2nd Street SE Cedar Rapids, IA 52401

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NORTHERN DISTRICT OF IOWA Box 74890, Cedar 700, B-263 United States Bankruptcy Court MAY 7 9 1995 District of_IOWA NORTHERN BARBARA A EVERLY, CLERK Bankruptcy Case No. 94-61277KW Debtor MERCANTILE BANK OF ILLINOIS Plaintiff Adversary Proceeding No. 94-6163KW ៊ីshelly kay smith Defendant **BILL OF COSTS** Notice is given that the following Bill of Costs will be presented to the bankruptcy clerk at the following place and time: Address Room 800 The Center, 425 Second St.SE 800 Date and Time May 25, 1 P. O. Box 74890 Cedar Rapids, IA 52407 1995 against Shelly Kay Smith Judgment was entered in the above entitled action on May (date) The clerk of the bankruptcy court is requested to tax the following as costs: \$ 120.00 Fees for service of summons and complaint Fees of the court reporter for any and all part of the transcript necessarily obtained for use in Fees and disbursements for printing Fees for witnesses (itemized on reverse)..... Fees for exemplifications and copies of papers necessarily obtained for use in this case Docket fees under 28 U.S.C. § 1923 Costs incident to taking of depositions Costs as shown on Mandate of appellate court Other costs [Please itemize] **TOTAL** \$ 120.00 DECLARATION Illinois I, attorney for Mercantile Bank of declare under penalties of perjury that the (name of party) foregoing costs are correct and were necessarily incurred in this action, that the services for which fees have been charged were actually and necessarily performed, and that a copy of this Bill of Costs was mailed this day with postage fully prepaid to; Name and Address of Judgment Debtor Shelly Kay Smith 2000 Valley Park, #12 Cedar Falls, IA 50613 COSTS ARE TAXED IN THE FOLLOWING AMOUNT AND INCLUDED IN THE JUDGMENT: \$_ BARBARA A. EVERLY Clesk of the Bankruptcy C

Days	DANCE Total Cost	Days	Total Cost	Miles	Total	Frak Milari
				ivinies	AGE Total Cost	Total Cost Each Witness
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NOTICE

Section 1924, Title 28, U.S. Code provides:

"Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed."

Section 1920 of Title 28 reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Bankruptcy Rules contain the following provisions:

Bankruptcy Rule 7054(b)

"COSTS. The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court."

Bankruptcy Rule 9006(f)

"ADDITIONAL TIME AFTER SERVICE BY MAIL. When there is a right or requirement to do some act or undertake some proceeding within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail, three days shall be added to the prescribed period."

Bankruptcy Rule 9021(a) (in part)

"Entry of the judgment shall not be delayed for the taxing of costs."
YOU MUST CALL the Clerk at 319/362-9696 to obtain a time for this to be set.... DO NOT SERVE, or send to Clerk's Office, WITHOUT HAVING OBTAINED A DATE & TIME. *Also, your affidavit must be attached. Include Military statement..

Affidavit regarding military service attached to the Moti . for Default Judgment.

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

MAY 1 9 1995

		BARBARA A. EVENLY, GLENI
IN RE:)	CASE NO. 94-61277KW
SHELLY KAY SMITH,)	ADVERSARY NO. 94-6163KW
Debtor.)	
MERCANTILE BANK OF ILLINOIS, N.A.,)))	
Plaintiff,)	AFFIDAVIT IN SUPPORT OF BILL OF COSTS
SHELLY KAY SMITH,))	
Defendant.)	
STATE OF IOWA))SS.		
POLK COUNTY)		

- I, G. Mark Rice, being first duly sworn upon oath deposes and states as follows:
- I am an attorney duly licensed to practice law in the State and Federal courts of Iowa.
 - 2. I am the attorney for the Plaintiff, Mercantile Bank of Illinois, N.A.
- 3. The Plaintiff, Mercantile Bank of Illinois, N.A. incurred costs of \$120.00 for filing its complaint in the above-captioned matter.
- 4. I have personal knowledge that the Plaintiff advanced this sum and that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged for were actually and necessarily performed.

- The Defendant, Shelly Kay Smith is not in the military service of the United 5. States of America, not in the military forces of any nation allied with the United States of America in the prosecution of present war, nor has she been ordered to report for induction under the provision of the Selective Training and Service Act of 1940, as amended, and she has not been ordered to report for service as a member of the Enlisted Reserve Corps, nor is the Defendant entitled to any of the privileges under the provisions of the said Soldiers' and Sailors' Civil Relief Act of 1940, or amendments, as I verily believe.
 - The statements contained herein are true and correct as I verily believe. 6.

ADAMS & HOWE, P.C.

6. Mark Rice, 504-64-2288

620 Hubbell Building Des Moines, IA 50309

(515) 246-1400

ATTORNEY FOR MERCANTILE BANK **OF ILLINOIS**

Subscribed and sworn to before me this 1840 day of

STATE OF TOWA

Mr. Robert Gottschald, Esq. cc: 401 South Jefferson, Box 416 Indianola, IA 50125

> United States Trustee Room 517, Federal Building 210 Walnut Street Des Moines, IA 50309

Proof of Service

The undersigned certifies that the foregoing		
instrument was served upon all parties to the above		
cause to each of the attorneys of record herein at their		
respective addresses disclosed on the pleadings on		
Mary 18, 1995		
By: XU.S. Mail FAX		
Hand Delivered Overnight Courier		
Federal Express Other:		
Signature: Holla Block		

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF IOWA

IN RE:)	CASE NO. 94-61277KW ADVERSARY NO. 94-6163KW
SHELLY KAY SMITH,)	cu CD
Debtor.)	U.S. BANKRUPTCY COURT NORTHERN DISTRICT OF IOWA
		MAY 22 1995
MERCANTILE BANK OF ILLINOIS,)	
N.A.,)	BARBARA A. EVERLY, CLERK
Plaintiff,)	
1.44.	Ć	AFFIDAVIT OF MAILING
VS.)	
SHELLY KAY SMITH,)	
)	
Defendant.)	
STATE OF IOWA)		
)ss.		
COUNTY OF POLK)		

The undersigned, after being duly sworn upon oath deposes and states that, on the 19th day of May, 1995, she served a copy of the Affidavit in Support of Bill of Costs and Bill of Costs upon the following named persons by depositing a copy of the same in the United States mail, first class, postage prepaid to such persons as indicated below:

Mr. Don E. Gottschalk 704 E. Main Street P.O. Box 523 Cedar Falls, IA 50613

Holly Block

Subscribed and sworn to before me this

th _ day of _ Alac

, 19<u>95</u>

LISA L. SANDERSON MY COMMISSION EXPIRES

NOTARY PUBLIC

Recorded: Vol V

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